

OPINION
45-163

January 25, 1945 (OPINION)

INTOXICATING LIQUOR

RE: Power of Cities to Regulate or Prohibit

I acknowledge your letter of January 18, in which you submit a question involving the legality of an ordinance adopted by the city of Washburn, the pertinent part of which reads as follows:

Sec. 1. After the adoption of this ordinance, it shall be unlawful to sell, offer for sale, give away, barter, or consume alcoholic beverages in any place where is sold or offered for sale any commodity other than tobacco, tobacco products, and soft drinks."

The question you submit is not free from doubt. But, generally speaking, the courts have recognized that the liquor traffic is an evil. A wide latitude of regulation is upheld by the courts on the whole in recognition of that very fact, unless the regulation is arbitrary or capricious.

The case of Fylkken v. City of Minot, 66 N.D. 251, 264 N.W. 228, indicates somewhat the attitude of our Supreme Court in the matter of the regulation of the liquor traffic by municipalities. While that does not touch upon the exact question you propound, still it is an indication of the attitude of our court. In view of the general attitude taken by the courts involving the right of a municipality to regulate a recognized evil, we will assume that the ordinance above referred to is valid, until it is definitely shown that it is invalid. This is not a case of an ordinance which is inconsistent with or in conflict with the state law, but involves a regulation on a subject not covered by the state law. The state law gives a city or a village the right to regulate the liquor traffic, subject to review by the courts, and in view of the fact that the general trend of the decisions of the court seems to be to the effect that a wide discretion in the matter of such regulation, if based upon any reasonable grounds, is within the authority of the municipality, we cannot say as a matter of law that the ordinance above referred to is invalid.

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Attorney General